Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters of	)	
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Reducing Universal Service Support In Geographic Areas That Are Experiencing Unsupported Facilities-Based Competition	))))	RM-11584

COMMENTS OF RURAL CELLULAR ASSOCIATION

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SUMMARY

The Petition for Rulemaking filed by the National Cable and Telecommunications Association suggests a new Commission fact-finding process intended to reduce universal service high-cost support received by incumbent local exchange carriers in study areas in which telephone service is also provided by unsubsidized wireline competitors. Rural Cellular Association agrees with NCTA that current high-cost disbursement mechanisms for rural incumbent LECs create undue pressure on the size of high-cost funding mechanisms, but RCA believes that the approach proposed by NCTA to address this funding issue would create a host of problems.

NCTA proposes a two-step process initiated by petitions filed by cable operators or other parties. In the first step, a petitioner must show that the study area involved is competitive, by demonstrating (1) that unsubsidized wireline competitors offer service to more than 75 percent of households in the study area (or to more than 50 percent of households in certain cases, if the petitioner cannot meet the 75 percent test); or (2) that a state has found sufficient competition to substantially deregulate the retail rates charged by the incumbent LEC. In the second step, the high-cost funding recipient has the burden of demonstrating the minimum amount of support necessary to ensure that non-competitive portions of the study area will continue to be served.

RCA focuses on three reasons why NCTA's proposal should not be adopted. First, the proposal would not advance universal service and competitive goals in several respects. An important universal service goal is to ensure that all consumers throughout America—including those residing in the most rural and highest-cost areas—have access to service. The NCTA proposal risks the prospect that these areas will be left with insufficient universal service support, or with no support at all. The fact that unsupported wireline competitors are operating in some portions of a study area does not guarantee that competition will play a role in ensuring the sufficient provision of service in other portions of the study area that have the highest costs. More-

over, placing the burden on incumbents to show the continuing need for support in these highest-cost areas likely could not produce accurate and reliable results regarding the level of required funding, thus risking outcomes in which customers in the highest-cost areas would not have access to services that are comparable to those available in urban areas, as required by statute.

An additional universal service goal is that funding mechanisms must be sufficient to provide access to services for all consumers in all areas of the nation. The Commission has been concerned that upward pressure on high-cost support is threatening the overall sufficiency of funding mechanisms. NCTA claims that its proposal would address this by reducing high-cost support disbursed to current recipients. One problem with this claim, however, is that the process proposed by NCTA would work very slowly in making these reductions, because petitions would focus on the need for reductions in particular study areas. NCTA also acknowledges that, in the majority of these study areas, the level of competition from unsubsidized wireline providers currently is not high enough to meet the first-step triggers proposed by NCTA.

Finally, NCTA's proposal would undercut the statutory goal of relying on competitive entry in rural and high-cost markets as a means of advancing universal service objectives. For example, NCTA suggests that the Commission could use reverse auctions to select wireless competitive ETCs in highest-cost areas that would continue to receive universal service support. NCTA's suggestion would restrict competitive entry, establish regulatory duopolies, make it more difficult for competitive wireless carriers to expand services and meet mandated build-out requirements, and jeopardize the ability of wireless competitive ETCs to raise capital.

A second problem with NCTA's proposal is that the petition process that would be the vehicle for the Commission's consideration of funding reductions would impose unwarranted burdens on funding recipients and would also create cumbersome administrative problems for the Commission. The proposal sets up the possibility of well over a thousand separate hearings in which funding recipients would be required to supply data and documentation—the nature and scope of which would have to be defined by the Commission—justifying their retention of funding. Given the nature of the issues involved, and the difficulties associated with trying to decide whether and to what extent high-cost funding should be reduced in particular cases, there likely would be a need for the Commission to conduct hearings giving opposing parties an opportunity to produce evidence, present testimony, and cross-examine witnesses.

A third problem with NCTA's proposal is that there are better ways of achieving NCTA's stated objective of easing pressures on high-cost mechanisms by reducing funding to incumbent LECs. For example, the size of the high-cost fund could be reduced significantly if the Commission required that funding received by rural incumbent LECs is fully portable, *i.e.*, if a rural incumbent loses a telephone service line to a competing carrier, then the incumbent also would lose high-cost funding associated with that line. Had portability been in place in connection with the disbursement of support to rural incumbent LECs, the growth in the size of the high-cost support mechanism (which the Commission has been so concerned about in recent years) would have actually been reduced by a total of more than $2 billion between 2002 and 2008—reducing the overall size of the high-cost program by approximately 7.7 percent. Stated another way, if portability had been in effect, it would have more than paid for the growth in the high-cost funding mechanism resulting from competitive entry by wireless ETCs, since the disbursements to wireless ETCs would have been more than offset by reductions in the level of support to rural incumbent LECs.

A second option for reducing the level of high-cost funding would be for the Commission to cease using an embedded cost methodology as the basis for disbursing high-cost funds to rural incumbent LECs. The Commission has long acknowledged that using embedded cost creates the wrong incentives for carriers and leads to higher funding requirements. Replacing embedded cost is a realistic option for the Commission because advances in cost modeling are making it possible to develop highly accurate forward-looking cost funding mechanisms.

In short, both of these options would produce "across the board" reductions that apply to all rural incumbents, and would thus have a greater impact on reducing high-cost funding than the piecemeal study area approach proposed by NCTA.

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COMMENTS OF RURAL CELLULAR ASSOCIATION

Rural Cellular Association ("RCA"),[1] by counsel, hereby responds to a Public Notice issued by the Commission[2] regarding a petition for rulemaking filed by the National Cable and Telecommunications Association ("NCTA") concerning proposed changes to the administration of the Universal Service Fund ("USF") high-cost support mechanism.[3]

[1] RCA is an association representing the interests of nearly 100 regional and rural wireless licensees providing commercial services to subscribers throughout the nation and licensed to serve more than 80 percent of the country. Most of RCA's members serve fewer than 500,000 customers. Several of RCA's members have received eligible telecommunications carrier ("ETC") status and are currently receiving federal universal service high-cost support in numerous states, including Wisconsin, Nebraska, Oklahoma, Illinois, North Carolina, Wyoming, Montana, Texas, Iowa, Missouri, Kansas, Mississippi, Alabama, and Kentucky.

[2] FCC Public Notice, "Comment Sought on the National Cable & Telecommunications Association Petition for Rulemaking To Reduce Universal Service High-Cost Support Provided to Carriers in Areas Where There Is Extensive Unsubsidized Facilities-Based Competition," DA 09-2558, rel. Dec. 8, 2009. The deadline for comments is January 7, 2010, and the deadline for reply comments is January 22, 2010.

[3] National Cable and Telecommunications Association, Reducing Universal Service Support in Geographic Areas That Are Experiencing Unsupported Facilities-Based Competition, Petition for Rulemaking, GN Docket No. 09-51, WC Docket No. 05-337, filed Nov. 5, 2009 ("Petition").

I. INTRODUCTION.

NCTA complains in its Petition that "the Commission continues to provide billions of dollars of support for wireline voice services provided by [incumbent local exchange carriers,]" even though fundamental marketplace and technological changes are bringing competition to rural service areas.[4] To help stem what NCTA believes to be the unwarranted and unnecessary flow of excess USF high-cost support to rural incumbent local exchange carriers ("LECs"), in light of these marketplace and technological changes, NCTA proposes a new regime for taking competitive factors into account in connection with the disbursement of high-cost support. NCTA's "fresh approach" would reduce or eliminate high-cost support where state deregulatory actions or other marketplace evidence "suggests that facilities-based competition from unsubsidized [wireline] entrants is extensive."[5]

Specifically, NCTA offers a two-step process that would enable the Commission to evaluate the continuing need for high-cost support in rural and high-cost study areas and to make funding adjustments based on its findings. In the first step, any party could petition the Commission to examine the ongoing need for high-cost support in a particular study area. The petitioner would have the burden of demonstrating that the area meets one of two triggers: (1) wireline service competitors (that do not receive any USF support) offer service to more than 75 percent of the households in the study area;[6] or (2) the state involved has substantially deregulated the retail

[4] Petition at 3.

[5] *Id*. at 4.

[6] NCTA also provides an additional twist to this 75 percent test, indicating that, if a petitioner cannot meet the 75 percent threshold, it would be sufficient for the petitioner to show that wireline service from an unsupported competitive provider is available to at least 50 percent of the households in the study area, and that the portion of the study area with no wireline competition has cost characteristics that are comparable to the portion of the study area in which competition exists (*e.g.*, similar terrain and population density). *Id*. at 13. The notion behind this less rigorous threshold, according to NCTA, is that a study area may have relatively uniform cost characteristics, but cable operators may provide voice service in only a portion of the study area because cable franchise boundaries do not match the study area's boundaries. *Id*.

rates of the incumbent LEC serving the study area. If either or both of those triggers are met, then the Commission would move to the second step, in which the burden would be on a high-cost funding recipient to show "the minimum amount of support necessary to ensure that non-competitive portions of the area will continue to be served."[7]

RCA is sympathetic to NCTA's view that the level of high-cost support received by certain rural incumbent LECs currently exceeds the amounts necessary to advance universal service goals, and RCA has consistently advocated USF reforms that would revise high-cost funding mechanisms in a manner designed to promote competitive entry and bring the benefits of efficient carrier operations and advanced technologies to consumers in rural and high-cost areas.[8] The problem with NCTA's Petition, however, is that the approach proposed by NCTA would lessen the likelihood that statutory universal service goals would be advanced throughout rural America, would introduce procedures that would impose significant burdens on high-cost support recipients as well as cumbersome and complicated fact-finding responsibilities on the Commission, and would not work effectively or expeditiously to achieve NCTA's stated goal of reducing the size of high-cost support mechanisms. RCA discusses these problems in the following section, and also suggests more effective and realistic steps the Commission should take to achieve the efficient use of high-cost funds.

II. DISCUSSION.

While the NCTA proposal places an emphasis on requiring incumbent LECs to justify their continued receipt of high-cost funding in study areas in which wireline competitors that do not receive any USF support have entered the market, the proposal pays less attention to the goal

[7] *Id*. at 5.

[8] *See, e.g.*, RCA Reply Comments, WC Docket No. 05-337, CC Docket No. 96-45, filed June 2, 2008, at 15-16 (discussing problems resulting from the Commission's continuing refusal to require full portability of USF high-cost funding).

of ensuring that the Commission's USF policies fulfill the statutory mandate of bringing universal service to rural and high-cost areas. Moreover, even if it could be concluded that the proposal does not pose a threat to this core universal service goal, the proposal does not offer an effective and comprehensive means of realizing NCTA's stated goal, *i.e.*, the reduction of excessive high-cost funding.

NCTA claims that its proposal for a Commission review process, to decide whether disbursements to fund recipients in particular study areas should be reduced, offers a useful first step toward USF reforms that will facilitate the deployment of broadband infrastructure and services in rural areas. The dubious nature of this claim is revealed, however, by an examination of the cumbersome and unwieldy procedural mechanism NCTA proposes to establish. Finally, the soundness of NCTA's proposal must be compared to other alternatives available to the Commission for achieving reductions in the level of high-cost funding. Such an examination illuminates compelling reasons for rejecting NCTA's Petition.

A. NCTA's Proposal Would Not Advance Universal Service Goals.

When measured against universal service goals, NCTA's proposal is problematic from two perspectives. An overarching goal of the Telecommunications Act of 1996[9] and the Commission's universal service policies is to extend service to unserved and underserved areas, so that consumers in rural and high-cost areas have access to services that are comparable to those available in urban areas, and that can be obtained at prices comparable to those charged to consumers in urban areas. NCTA's proposal would not advance this goal.

Another universal service goal is to ensure that the Commission's universal service mechanisms are sufficient to meet statutory and regulatory universal service objectives. The

[9] Pub. L. No. 104-104, 110 Stat. 56 (1996).

Commission has expressed concerns that this goal is being placed in jeopardy by increases in the size of the high-cost support mechanism,[10] and NCTA suggests that its proposal would address this issue. In fact, however, there are reasons to conclude that the fact-finding procedural mechanisms proposed by NCTA would not produce any substantial, near-term reductions in the size of the high-cost fund.

1. The Mechanism To Review High-Cost Support Proposed by NCTA Would Threaten the Sufficient Provision of Service in Currently Unserved or Underserved High-Cost Areas.

A central component of NCTA's proposal is to require rural incumbent LECs[11] to meet the burden of demonstrating that continued high-cost support is necessary in a particular study area (if a petitioner has met its threshold burden regarding the presence of competition in the study area).[12] If a rural incumbent LEC fails to meet this burden, and its high-cost funding is reduced or eliminated, this would create the risk that service would not be extended and maintained in the highest-cost portions of the study area. NCTA suggests that the Commission could require showings by the rural incumbent LEC that would enable the agency to accurately calibrate the level of high-cost support needed to enable the incumbent to deploy infrastructure and provide services in the highest-cost areas,[13] and then to reduce the incumbent's overall high-cost support down to that level.

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[10] *See*, *e.g.*, *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834, 8837-38 (para. 6) (2008), *aff'd*, *RCA v. FCC*, No. 08-1284, slip op. (D.C. Cir. Dec. 11, 2009).

[11] The NCTA proposal applies to both rural and non-rural incumbent LECs. *See, e.g.*, Petition, Attach. A, Proposed Rule, Sec. 54.317(a)(1) (indicating that petitions may be filed to reduce support that otherwise would be available to ETCs under the Commission's High-Cost Fund, Interstate Access Support, and Interstate Common Line Support programs). RCA focuses portions of its discussion on high-cost support received by rural incumbent LECs in part because NCTA emphasizes in its Petition problems associated with current mechanisms that provide support to rural incumbents. *See, e.g.*, Petition at 9-10.

[12] *See* Petition at 17-20.

[13] *Id*. at 17-19.

This proposed process presents the risk that the Commission's calculations could result in funding reductions that are unnecessarily excessive—not an unlikely scenario given the complexities involved in the calculations—which would leave the incumbent in the position of receiving a level of support that is not adequate to sustain the deployment of facilities and provision of service in the highest-cost portions of the incumbent's study area. The risks of such a result would be magnified in cases in which the Commission opted to eliminate the incumbent's support altogether. In such circumstances, the incumbent would be forced to make additional, subsequent showings in an effort to reinstate levels of support sufficient to ensure that statutory service comparability goals[14] are met in the incumbent's highest-cost service areas. Such disruptions would impede the achievement of universal service goals in highest-cost areas, thus disadvantaging consumers residing in those areas.

NCTA implies that the fact-finding mechanisms it proposes would be sufficient to ensure that incumbent LECs would be left with just the right amount of funding necessary to make sure that consumers in the highest-cost service areas have access to telephone and broadband services comparable to those available in urban areas, and would also be sufficient to ensure that the Commission could correctly determine the cases in which funding could be eliminated altogether without jeopardizing the interests of consumers in the highest-cost areas. RCA is much less sanguine about the prospect that consumers in these highest-cost areas would obtain sufficient access to telephone and broadband services if the NCTA proposal is adopted.[15]

Moreover, although NCTA recognizes that, in the context of its proposal, fact-based decisions about appropriate USF funding levels occupy a central importance,[16] NCTA nonetheless

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[14] *See* Section 254(b)(3) of the Communications Act of 1934 ("Act"), 47 U.S.C. § 254(b)(3).

[15] This issue is discussed further in Section II.B., *infra*.

[16] Petition at 20.

offers the possibility of substituting proxies for the fact-based findings because proxies "could be used to streamline the process."[17] One type of proxy would involve the Commission "establishing a sliding scale that would reduce support by a certain percentage that varies with the level of competition in the area, *i.e.*, ILECs in areas with more extensive unsubsidized competition would see larger reductions in their high-cost support than ILECs in areas with less extensive unsubsidized competition."[18]

This suggestion of steps that could be taken to "streamline" the Step 2 "minimum support" portion of NCTA's proposal[19] appears to be an implicit acknowledgment by NCTA that the fact-finding process would be burdensome and cumbersome.[20] NCTA's "sliding scale" mechanism would effectively abandon any attempt to determine with any precision the extent to which high-cost funding should be maintained in order to ensure that voice and broadband services are deployed in the highest-cost portions of an incumbent LEC's study area.[21] The sliding-scale scheme would definitely benefit wireline competitors in an incumbent LEC's study area, but it is much less certain that this scheme would ensure a sufficient level of high-cost support needed for deploying infrastructure and maintaining services in the highest-cost portions of the study area.

While RCA supports NCTA's general premise that unnecessary high-cost subsidies should be identified and eliminated, RCA is also concerned that, as described in the preceding paragraphs, NCTA's proposal could complicate and unnecessarily interfere with efforts to extend services to portions of study areas that are the most difficult to serve. Consumers in these areas

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[17] *Id*.

[18] *Id*.

[19] *Id*. at 17-20.

[20] Section II.B., *infra*, focuses on this issue.

[21] As RCA has discussed, it is unclear whether NCTA's proposed petition review decision-making process could render precise, reliable determinations in any event.

would be harmed by the type of Commission review process suggested by NCTA if this process resulted in miscalculations and unwarranted reductions or eliminations of funding. RCA is skeptical about the merits of the NCTA proposal because of its introduction of these risks, especially given the fact that, as RCA will discuss, other policy options are likely to be more effective in achieving universal service goals and addressing the concerns raised by NCTA in its Petition.[22]

An additional concern is that NCTA's proposal seems to undercut the promotion of competitive entry in highest-cost areas, which is problematic in light of statutory and regulatory mandates to pursue the twin goals of universal service and increased competition in local exchange markets.[23] The Commission has followed the policy of ensuring that universal service mechanisms are designed in a manner that promotes competitive entry, because of the agency's view that the presence of competitors in rural and high-cost markets enhances the prospects for achieving universal service goals.[24] As a result of this policy, wireless competitive ETCs have played a major role in bringing the benefits of advanced technologies to consumers in rural and high-cost areas.

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[22] See Section II.C., *infra*.

[23] Congress has established twin objectives in the Act: Sufficient support mechanisms must be maintained to preserve and advance universal service, and competition must be promoted in the telecommunications marketplace. "Section[s] 254(b) and 214(e) of the 1996 Act provide the statutory framework for a system that encourages competition while preserving and advancing universal service." Rural Task Force, *White Paper 5: Competition and Universal Service* (2000) at 8 (accessed at http://www.wutc.wa.gov/rtf). The Commission has acknowledged these twin goals, and has followed the principle that "universal service mechanisms and rules" should "neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology or another." *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801 (para. 47) (1997) ("*First Report and Order*") (subsequent history omitted).

[24] *See*, *e.g.*, *First Report and Order*, 12 FCC Rcd at 8933 (para. 289). Unfortunately, as RCA has explained in other proceedings, the Commission's ill-considered decision to place an interim cap on high-cost disbursements to wireless competitive ETCs is severely undermining the Commission's own pro-competitive policies. *See*, *e.g*., RCA Comments, National Broadband Plan Public Notice # 19, GN Docket No. 09-47, GN Docket No. 09-51, GN Docket No. 09-137, filed Dec. 7, 2009 ("RCA NBP PN # 19 Comments"), at 17-18.

NCTA essentially brushes aside the importance of competitive entry and the role wireless competitive ETCs have played in advancing the Commission's universal service goals. Instead, NCTA makes proposals that would hinder the ability of wireless competitive ETCs to continue serving consumers in rural and high-cost areas. For example, NCTA acknowledges in a footnote that its proposal does not deal with situations "where one or more wireless CETCs serve the portion of [a] study area for which the ILEC will [continue to receive] support" after a petition for the reduction of the incumbent LEC's support is granted by the Commission.[25] NCTA suggests that, in these circumstances, "[t]he Commission has a number of options it may want to consider including requiring a cost showing comparable to that made by the ILEC or using competitive bidding to select one supported wireless provider in such areas."[26]

The problem with suggesting that wireless competitive ETCs be required to meet the burden of making cost showings comparable to those NCTA proposes for incumbent LECs is that such a requirement would compound the uncertainties and risks associated with applying NCTA's proposal to the incumbent carriers. If NCTA's suggestion were adopted, the Commission would need to develop costing methodologies for both incumbents and competitive ETCs, to be used by the Commission in making judgments about whether to reduce or eliminate high-cost funding for both incumbents and competitive ETCs in each study area that is the subject of a petition. Exposing competitive ETCs to such uncertainties regarding their ongoing funding streams could dampen incentives for competitive entry, and if the Commission "gets it wrong" in deciding to reduce or eliminate funding being disbursed to competitive ETCs in particular study areas, the ensuing disruptions would not serve the interests of consumers in those areas.

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[25] Petition at 18, n.47.

[26] *Id*.

2. The Use of Competitive Bidding To Limit the Number of Supported Wireless Competitive ETCs in a Study Area Is Also Problematic.

NCTA's suggestion that reverse auctions be used in certain cases to limit the number of wireless competitive ETCs providing service in a study area raises a number of problems. For example, using reverse auctions to determine eligibility for wireless carriers to provide service in study areas would give bidding carriers incentives to cut costs (in order to make low bids), even if this would risk sacrificing service quality, innovation and infrastructure deployment. The reverse auctions concept suggested by NCTA—limiting support to one wireless competitive ETC—also would amount to establishing a regulatory duopoly in the service areas involved, which would be anti-competitive and contrary to statutory policies. Competitive markets drive efficient operations, innovation, and lower prices. Reverse auctions would fall far short of replicating these benefits of competitive markets.

RCA's view is that universal service reform should avoid risk-taking in these uncertain economic times. The reverse auction mechanism suggested by NCTA could create significant jeopardy for wireless competitive ETCs in the highest-cost service areas. If, for example, a wireless competitive ETC is not a winning bidder in a reverse auction for service areas where it is already providing service, its loss of funding would compromise its ability to maintain and expand services and to meet build-out and other requirements mandated by state regulatory commissions. Moreover, reverse auctions would complicate the ability of wireless carriers to raise capital, because of uncertainty about whether these carriers could repay loans if they are not auction winners.

A final point regarding competitive entry should also be noted. Not only will wireless competitive ETCs be hampered in their efforts to enter and remain in the highest-cost portions of incumbent LECs' service areas, but it also is unlikely that cable operators will seek to compete in these markets. Cable operators have little incentive to extend telephone or broadband service to highest-cost areas because they would not be likely to receive what they would consider to be a sufficient return on their investment. This conclusion is borne out by the fact that, in 2008, cable voice service was available to more than 75 percent of households in only 13 percent of all rural study areas, and such service was available to more than 95 percent of households in only 6 percent of all rural study areas.[27] There seems to be little reason to anticipate that cable operators will pursue business plans in the future that involve the deployment of cable infrastructure in the highest-cost portions of incumbent LECs' areas.[28]

3. Even If the Risks to Universal Service Posed by NCTA's Proposal Could Be Overcome, the Proposal Is Unlikely To Achieve Significant Reductions in the Size of the USF High-Cost Fund.

Even if there were a reasonable basis for concluding that NCTA's proposal would not jeopardize the goal of bringing service to the highest-cost portions of incumbent carriers' study areas, the Commission would still be left with the problem that NCTA's proposed study area review process may not function as an effective means for reducing the size of the high-cost support mechanism.

NCTA acknowledges that "at present the majority of rural LEC study areas would not currently qualify under this trigger [*i.e.*, the showing that competitive wireline voice service is available, from a provider that does not receive high-cost support, to at least 75 percent of households in a study area] and therefore would not experience any change in the level of high

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[27] Petition, Attach. B, Jeffrey A. Eisenach, "Universal Service Subsidies to Areas Served by Cable Telephony," Nov. 2009 ("Eisenach Paper"), at 19 (Figure 5).

[28] NCTA notes that "[t]he presence of one or more unsubsidized wireline competitors should be sufficient to ensure that consumers will have access to reasonably priced service even if government subsidies are reduced or eliminated." Petition at 5. Even assuming *arguendo* that this could be true in areas in which cable operators *are* providing service, this assumption would not be operative in highest-cost portions of study areas in which cable operators *are not* providing telephone or broadband service.

cost support they receive."[29] In fact, as RCA has noted, based on 2008 figures, this trigger is met in only 13 percent of all rural study areas. With only 13 percent of rural study areas in play, it is difficult to see how NCTA's proposal could be effective in arresting what NCTA characterizes as the staggering rate of escalation in the total size of the federal USF program.[30] The unlikelihood of NCTA's proposal resulting in any significant reduction in the size of the high-cost mechanism is further illustrated by the fact that, in order to realize fund reductions in those rural study areas in which the competitive trigger is met, cable operators or other parties would need to file 165 petitions,[31] and the Commission would need to act favorably on these petitions by reducing or eliminating funding to rural incumbents operating in the study areas involved.

B. The Commission Review Process Proposed by NCTA Would Be Burdensome to Incumbents and Competitive ETCs and Would Create Cumbersome and Complicated Administrative Problems for the Commission.

Although NCTA characterizes its proposal as a "modest first step on the road to USF reform[,]"[32] the process that NCTA suggests for determining whether high-cost support to incumbent LECs should be reduced in particular study areas presents substantial problems. NCTA's proposal involves establishing a "procedure to reassess the amount of support made available to a particular location . . . ."[33] The "particular locations" are each of the 1,314 study areas that NCTA has identified.[34] This means that, under NCTA's proposal, there would be the potential

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[29] *Id*. at 13.

[30] *Id*. at 3.

[31] Based on NCTA's calculations and assumptions, there are 1,314 rural study areas, and there are 165 study areas (13 percent of the total) in which there is cable voice coverage for more than 75 percent of the households. Eisenach Paper at 19 (Figure 5).

[32] Petition at ii.

[33] *Id*. at 11.

[34] See Section II.A.2., *supra*.

for well over a thousand separate Commission review proceedings[35] in which incumbent LECs, and potentially competitive ETCs,[36] would be required to present documentation regarding the continuing need for high-cost support in all or portions of the particular study areas that are the subject of these proceedings—hardly a task that could be considered reasonable for the Commission or many rural carriers to endure.

In addition, the number of proceedings could balloon even higher, if cable operators or other parties, whose petitions were denied with respect to particular study areas, chose to file additional petitions, arguing that changed circumstances in the study areas involved warrant further review by the agency. Further, given the reasonable expectation that these proceedings would be contentious, there would be the prospect that parties receiving initial adverse decisions by the Commission would seek reconsideration by the agency and, in some cases, judicial review of the agency's decision. Thus, by any reasonable measure, the process proposed by NCTA would impose significant burdens and costs on high-cost fund recipients required to defend their receipt of funding in the Commission's review proceedings.

One of the theories of NCTA's proposal is that USF fund recipients' costs eligible for high-cost support should be limited to costs that are incurred in non-competitive portions of study areas and that cannot be recovered from services provided by the recipients in these non-competitive areas.[37] Although NCTA suggests various categories of costs that it believes could

[35] RCA recognizes that, initially, the number of study areas that could be the subject of petitions would be less, because, as discussed in Section II.A.2., *supra*, less than a majority of existing study areas would currently meet the competitive triggers proposed by NCTA. Nonetheless, in light of the fact that NCTA apparently intends that its review mechanism be made a permanent fixture of the Commission's USF rules, the number of study areas that could be the subject of petitions by cable operators or other parties would increase over time.

[36] As RCA has discussed, NCTA has suggested that, in certain circumstances, wireless competitive ETCs could be required to make cost showings. *See* Petition at 18, n.47.

[37] *Id*. at 17.

be completely eliminated by the Commission,[38] NCTA does not devote much discussion to the issue of how the Commission could develop reasonable rules designed to accurately measure the level of high-cost support necessary to deploy infrastructure and provide services in areas in which no service is being provided by wireline competitors that do not receive any USF support. Developing such rules would be a difficult and time-consuming task for the Commission. For example, different rules might need to be developed for wireline and wireless technologies, because the differences in the infrastructures used by these technologies lead to different cost characteristics. The Commission would also be required to examine each type of network-wide cost and determine how these costs could be reasonably allocated between the "competitive" and "non-competitive" portions of an incumbent LEC's study area.

A further task for the Commission would be the development of fact-finding procedures that would fairly weigh the evidence produced by USF fund recipients in each case brought against them by a cable operator or other party. Given that NCTA's proposal envisions "a rigorous, fact-based process,"[39] it is likely that the only way the Commission could ensure a fair process that would produce reasonable and accurate findings would be for the Commission to conduct hearings at which the opposing parties could produce evidence, present testimony, and cross-examine witnesses.[40] Because of the importance of the issues at stake—the need for determinations by the Commission regarding the levels of USF support necessary to ensure the achievement of universal service deployment goals in unserved or underserved areas—RCA doubts that the Commission would find it reasonable to attempt to make these decisions without

[38] *Id*. at 18-19.

[39] *Id*. at 20.

[40] Many state regulatory commissions conduct such hearings for the purpose of examining the data and representations presented by carriers seeking to be designated as ETCs.

the benefit of evidentiary hearings. Conducting such hearings, however, would present significant resource issues for the agency.

C. Other Policy Options Would Be More Effective Than NCTA's Proposal in Reducing the Size of the USF High-Cost Funding Mechanism.

An important question that must be examined in evaluating the NCTA proposal is whether other policy options should be considered that produce effective results in reducing the size of the USF high-cost fund, but that would also avoid the problems with NCTA's proposed approach.

In discussing the pressures on USF funding, NCTA identifies in its Petition one of the significant problems with the current USF program, noting that:

> [T]he rural LEC program includes features that lead to ever-increasing growth in the amount of support once competitive entry occurs. Under the program for rural LECs, as competitors enter a market and win customers from the incumbent, the amount of per-line support provided to a rural LEC increases because of Commission rules that average all fixed costs across the number of lines served.[41]

In other words, as a rural incumbent LEC loses lines to competitors that enter markets served by the incumbent, the incumbent does not lose any high-cost support. Instead, the incumbent's level of support remains the same and is spread over its reduced number of lines.

There is, of course, a simple solution to this problem: The Commission should make all high-cost support fully portable among funding recipients. As RCA has discussed, an effective way to advance universal service in rural and high-cost areas is to promote competitive entry, because competitive entry provides consumers with a greater range of service choices, and gives carriers incentives to lower their costs and to develop more innovative service offerings. In addition, competitive entry promotes overall carrier efficiency. As the Commission has explained, "[i]f the CLEC can serve the customer's line at a much lower cost than the incumbent, this may

[41] Petition at 9 (footnote omitted).

indicate a less than efficient incumbent. The presence of a more efficient competitor will require the ILEC to increase its efficiency or lose customers."[42]

Portability is one of the best means available to the Commission to promote competitive entry. Under portability, USF high-cost support follows the customer. If a customer switches carriers, then the support moves from the customer's old carrier to the new carrier. By making high-cost support fully portable, all carriers in the market—including both incumbents and competitive carriers—are treated equally, thus promoting competition. That way, "the market, and not local or federal government regulators, determines who shall compete for and deliver services to customers. . . . [T]his principle is made necessary not only by the economic realities of competitive markets but also by statute."[43]

In light of the concerns raised by NCTA regarding the growth in USF support requirements,[44] an equally important fact is that portability will help to reduce the size of the USF high-cost funding mechanism. As NCTA has explained in its Petition, upward pressure on the fund is increased under the current regime because incumbent carriers retain support when they lose a customer. This regime requires the fund to essentially pay twice for the same customer: once to the competitive carrier actually serving the customer, and once to the incumbent that no longer has the customer. As RCA has recently explained, portability eliminates this double payment:

> [A] strong advantage of portability is that it has the effect of taking universal service support away from inefficient carriers, thus lowering the overall level of disbursed support, as well as ensuring that support is provided to carriers that will use the support efficiently. Had portability been in place in connection with the disbursement of support to rural incumbent LECs, the growth in the size of the

[42] *First Report and Order*, 12 FCC Rcd at 8933 (para. 289).

[43] *Alenco v. FCC*, 201 F.3d 608, 616 (5th Cir. 2000). Portability applies today to competitive carriers receiving high-cost support. If a competitive carrier loses a customer, it loses the support associated with that customer. Applying this requirement to incumbent carriers would further enhance competition, ensuring that consumers in rural and high-cost areas benefit from the efficient use of high-cost funding.

[44] *See* Petition at 1, 4.

> high-cost support mechanism (which the Commission has been so concerned about in recent years) would have been reduced considerably. Stated another way, if portability had been in effect, it would have paid for the growth in the high-cost funding mechanism resulting from competitive entry by wireless ETCs, since the disbursements to the wireless ETCs would have been offset by reductions in the level of support to rural incumbent LECs.[45]

The following table illustrates how the lack of portability affected incumbent LEC high-cost funding from 2002 through 2007, and also shows the level of competitive ETC funding during those years.[46] The charts in Exhibit A further show the impact that the lack of portability has had on the high-cost support mechanism.

YEAR	EXCESS ILEC SUPPORT	CETC SUPPORT
2002	$423,555.000	$46,100,000
2003	$803,674,000	$129,600,000
2004	$972,153,000	$315,800,000
2005	$1,050,556,000	$627,700,000
2006	$1,046,736,000	$966,600,000
2007	$1,128,389,000	$1,176,900,000
2008	$1,257,433,000	$1,384,500,000
TOTAL	$6,682,496,000	$4,647,200,000

[45] RCA NBP PN # 19 Comments at 12.

[46] From June 2001 to June 2008, incumbent LEC switched access lines declined from approximately 174.7 million to approximately 124.6 million, an overall drop of approximately 28.7 percent. *See* Local Telephone Competition: Status as of June 30, 2008, at Table 1 (End-User Switched Access Lines Reported). From 2001 to 2008, incumbent LEC annual high-cost support went up from approximately $2.57 billion to approximately $3.09 billion, an overall increase of approximately 20.4 percent. The total savings that would have resulted from full portability, as reflected in the table, were calculated by determining the amount by which nationwide incumbent LEC high-cost support in a given year exceeded the support incumbent LECs would have received if the amount of support had declined at the same rate as nationwide incumbent LEC switched access lines. The first year for which this calculation was performed was 2002, using 2001 as the base data period. The incumbent LEC and competitive ETC high-cost support amounts are drawn from Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report*, CC Docket No. 98-202, 2009, Table 3.2.

A second option that would work more effectively than NCTA's proposal to reduce USF funding levels is for the Commission to eliminate the use of the embedded cost methodology as the mechanism for disbursing high-cost fund support to rural incumbent LECs. As a general matter, the deficiencies of the embedded cost methodology (under which rural carrier ETCs are reimbursed for their actual costs incurred in providing services) have led the Commission to conclude that "calculating high cost support based on embedded cost is contrary to sound economic policy."[47] The embedded cost methodology does not encourage carriers to operate efficiently. The Commission has observed, for example, that "a support mechanism based on . . . a carrier's embedded costs . . . provides no incentives for ETCs to provide supported services at the minimum possible costs . . . ."[48] Disbursing high-cost funds based on carriers' embedded costs also gives the carriers incentives to inflate their costs. The Supreme Court has concluded, for example, that relying "on embedded costs as allegedly reflected in incumbents' book-cost data [creates] possibilities for manipulation [and] the temptation . . . to overstate book costs to [regulatory] commissions . . . ."[49]

The use of embedded cost also distorts carriers' investment decisions, "because carriers could receive support for inefficient as well as efficient investments."[50] The Commission has stated that using embedded cost to award high-cost support to incumbent rural carriers has become a way to prop up these carriers, rather than a means of bringing universal service to rural and high-cost areas. Thus, the Commission has noted that "[i]n many cases, [embedded cost]

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[47] *First Report and Order*, 12 FCC Rcd at 8935 (para. 292).

[48]*High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1495, 1500 (para. 11) (2008).

[49] *Verizon v. FCC*, 535 U.S. 467, 512 (2002).

[50] *USF First Report and Order*, 12 FCC Rcd at 8901 (para. 228).

support is used to offset the increasing revenue losses to . . . incumbent carriers as the gap between legacy technology and more efficient technologies has widened."[51]

Eliminating the embedded cost mechanism in favor of another method for calculating high-cost support for rural incumbent LECs would help to eliminate carrier incentives that contribute to upward pressures on the high-cost fund. Replacing embedded cost is a realistic option for the Commission because of the development of highly versatile cost models that are able to develop costs for various types of telecommunications networks operated by incumbent carriers and competitive carriers. These models can use either historical or forward-looking costs, and also can utilize different types of economic costs (*e.g.*, total service long run incremental costs, total element long run incremental costs, long run total cost).

The cost models rely on the use of geographic information system ("GIS") input data, which enables the construction of data bases that link various physical and demographic data to specific geographic locations. Cost modeling utilizing GIS data can enable the Commission to identify the costs of the most efficient, least-cost service providers and to focus on the technology that is "the least-cost, most-efficient, and reasonable technology for providing the supported services that is currently being deployed."[52]

The sophisticated techniques employed by cost modeling provide the Commission with the option of relying on forward-looking economic cost as a replacement for embedded cost as a means of making high-cost funding disbursements to rural incumbent LECs. Such an approach would be consistent with the Commission's long-held view that "the proper measure of cost for determining the level of universal service support is the forward-looking economic cost of con-

[51] *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, 6656 (App. B) (2008).

[52] *First Report and Order*, 12 FCC Rcd at 8913 (para. 250).

structing and operating the network facilities and functions used to provide the supported services[,]"[53] because forward-looking cost "best reflects the cost of providing service in a competitive market . . . ."[54] Utilizing forward-looking costs would help to drive down the size of the high-cost fund, because, as the Commission has explained, "[s]upport based on forward-looking models will ensure that support payments remain specific, predictable, and sufficient, . . . particularly as competition develops. To achieve universal service in a competitive market, support should be based on the costs that drive market decisions, and those costs are forward-looking costs."[55]

As RCA has discussed, requiring full portability of high-cost funding disbursements would have the same general effect as replacing embedded cost: significantly reducing the size of the high-cost fund. In addition, neither of these options would cause the types of problems that are associated with the NCTA proposal. Another important advantage of these options is that their impact on reducing high-cost funding would be more comprehensive than the impact that NCTA's proposal would have. Requiring full portability, and eliminating the embedded cost mechanism, would affect every rural incumbent LEC in every study area, whereas NCTA's proposal for Commission review proceedings to assess the need for reductions in high-cost support would have a potential impact only in those study areas selected by cable operators or other petitioning parties.

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[53] *Id*. at 8899 (para. 224).

[54] *Id*. at 8792 (para. 26).

[55] *Federal-State Joint Board on Universal Service; Access Charge Reform*, CC Docket No. 96-45, CC Docket No. 96-262, Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report and Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking, 14 FCC Rcd 8078, 8103 (para. 50) (1999).

III. CONCLUSION.

Although NCTA raises significant concerns in its Petition regarding the pressures that are imposed on the universal service high-cost support mechanism as a result of excessive disbursements made to rural incumbent LECs, the solution proposed by NCTA has substantial problems of its own and also would be less effective in reducing the size of the high-cost fund than other options that are readily available to the Commission as it considers comprehensive universal service reform. For these reasons, RCA urges the Commission not to initiate a rulemaking proceeding to consider the proposals made by NCTA.

Respectfully submitted,

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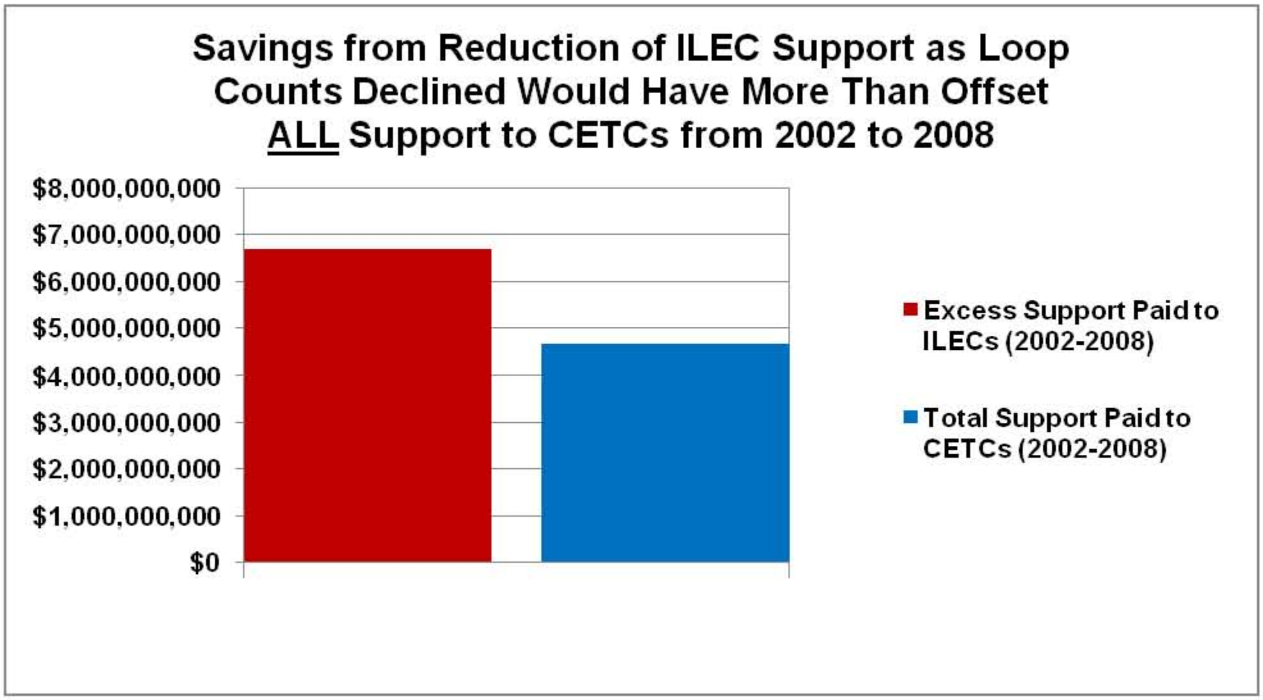
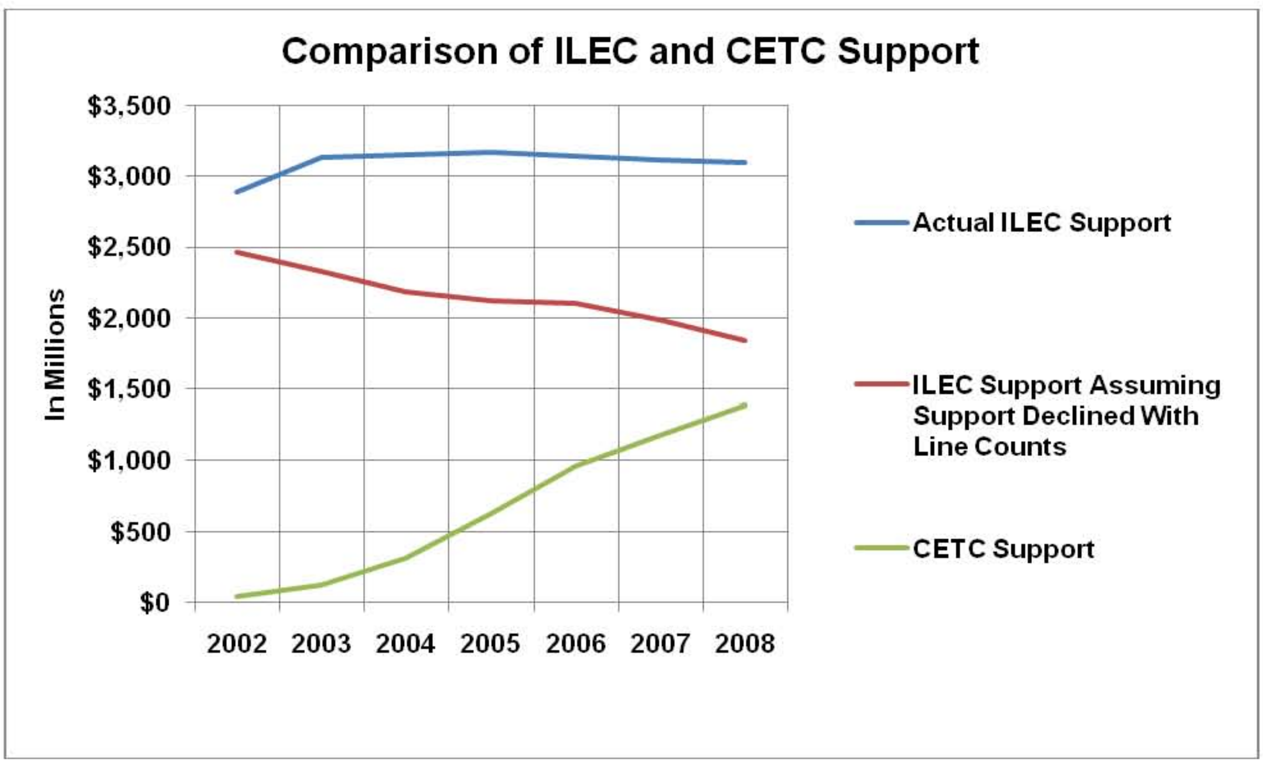
EXHIBIT A



Savings from Reduction of ILEC Support as Loop Counts Declined Would Have More Than Offset ALL Support to CETCs from 2002 to 2008
$8,000,000,000
$7,000,000,000
$6,000,000,000
$5,000,000,000
$4,000,000,000
$3,000,000,000
$2,000,000,000
$1,000,000,000
$0
Excess Support Paid to ILECs (2002-2008)
Total Support Paid to CETCs (2002-2008)



Comparison of ILEC and CETC Support
$3,500
$3,000
$2,500
$2,000
$1,500
$1,000
$500
$0
In Millions
2002 2003 2004 2005 2006 2007 2008
Actual ILEC Support
ILEC Support Assuming Support Declined With Line Counts
CETC Support